

AMENDED IN ASSEMBLY JULY 1, 2014

AMENDED IN ASSEMBLY JUNE 16, 2014

AMENDED IN SENATE APRIL 21, 2014

SENATE BILL

No. 1365

Introduced by Senator Padilla

(Principal coauthor: Assembly Member Alejo)

(*Coauthor: Assembly Member Fong*)

February 21, 2014

An act to add the heading of Article 1 (commencing with Section 14025) and the heading of Article 2 (commencing with Section 14027) to, and to add Article 3 (commencing with Section 14040) to, Chapter 1.5 of Division 14 of the Elections Code, relating to elections.

LEGISLATIVE COUNSEL'S DIGEST

SB 1365, as amended, Padilla. California Voting Rights Act of 2001.

Existing law, the California Voting Rights Act of 2001 (CVRA), prohibits the use of an at-large election in a political subdivision if it would impair the ability of a protected class, as defined, to elect candidates of its choice or otherwise influence the outcome of an election. The CVRA provides that a voter who is a member of a protected class may bring an action in superior court to enforce the provisions of the CVRA, and, if the voter prevails in the case, he or she may be awarded reasonable litigation costs and attorney's fees. The CVRA requires a court to implement appropriate remedies, including the imposition of district-based elections, that are tailored to remedy a violation of the act.

This bill would provide parallel provisions that prohibit the use of a district-based election in a political subdivision if it would impair the

ability of a protected class, as defined, to elect candidates of its choice or otherwise influence the outcome of an election. The bill would require a court to implement specified remedies upon a finding that a district-based election was imposed or applied in a manner that impaired the ability of a protected class to elect candidates of its choice or otherwise influence the outcome of an election.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares that the
2 purpose of this act is to address ongoing vote dilution and
3 discrimination in voting as matters of statewide concern, in order
4 to enforce the fundamental rights guaranteed to California voters
5 under Section 7 of Article I and Section 2 of Article II of the
6 California Constitution. Therefore, the provisions of this act shall
7 be construed liberally in furtherance of this legislative intent to
8 eliminate minority vote dilution. It is the further intent of the
9 Legislature that any remedy implemented under this act shall
10 comply with the 14th Amendment to the United States Constitution.

11 SEC. 2. The heading of Article 1 (commencing with Section
12 14025) is added to Chapter 1.5 of Division 14 of the Elections
13 Code, to read:

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15 Article 1. General Provisions

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17 SEC. 3. The heading of Article 2 (commencing with Section
18 14027) is added to Chapter 1.5 of Division 14 of the Elections
19 Code, to read:

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21 Article 2. At-Large Elections

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23 SEC. 4. Article 3 (commencing with Section 14040) is added
24 to Chapter 1.5 of Division 14 of the Elections Code, to read:

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26 Article 3. District-Based Elections

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28 14040. District-based elections shall not be imposed or applied
29 in a manner that impairs the ability of a protected class to elect

1 candidates of its choice, or its ability to influence the outcome of
2 an election, as a result of the dilution or the abridgment of the
3 rights of voters who are members of a protected class.

4 14041. (a) A violation of Section 14040 is established if it is
5 shown that racially polarized voting occurs in elections for
6 members of the governing body of the political subdivision or in
7 elections incorporating other electoral choices by the voters of the
8 political subdivision. Elections conducted prior to the filing of an
9 action pursuant to Section 14040 and this section are more
10 probative to establish the existence of racially polarized voting
11 than elections conducted after the filing of the action.

12 (b) The occurrence of racially polarized voting shall be
13 determined from examining results of elections in which at least
14 one candidate is a member of a protected class or elections
15 involving ballot measures, or other electoral choices that affect
16 the rights and privileges of members of a protected class. One
17 circumstance that may be considered in determining a violation
18 of Section 14040 and this section is the extent to which candidates
19 who are members of a protected class and who are preferred by
20 voters of the protected class, as determined by an analysis of voting
21 behavior, have been elected to the governing body of a political
22 subdivision that is the subject of an action based on Section 14040
23 and this section.

24 (c) The fact that members of a protected class are not
25 geographically compact or concentrated may not preclude a finding
26 of racially polarized voting, or a violation of Section 14040 and
27 this section, but may be a factor in determining an appropriate
28 remedy.

29 (d) Proof of an intent on the part of the voters or elected officials
30 to discriminate against a protected class is not required.

31 (e) Other factors such as the history of discrimination, the use
32 of electoral devices or other voting practices or procedures that
33 may enhance the dilutive effects of the election system, denial of
34 access to those processes determining which groups of candidates
35 will receive financial or other support in a given election, the extent
36 to which members of a protected class bear the effects of past
37 discrimination in areas such as education, employment, and health,
38 which hinder their ability to participate effectively in the political
39 process, and the use of overt or subtle racial appeals in political

1 campaigns are probative, but not necessary factors, to establish a
2 violation of Section 14040 and this section.

3 (f) The fact that a district-based election was imposed on the
4 political subdivision as a result of an action filed pursuant to Article
5 2 shall not be a defense to an action alleging a violation of this
6 article.

7 14042. (a) (1) Upon a finding of a violation of Section 14040
8 and Section 14041, the court shall implement appropriate remedies,
9 as provided in this subdivision, that are tailored to remedy the
10 violation and that are guided in part by the views of the protected
11 class.

12 (2) (A) The court shall implement, as an appropriate remedy
13 under this subdivision, an effective district-based elections system
14 that ~~provide~~ *provides* the protected class the opportunity to elect
15 candidates of its choice from single-member districts.

16 (B) If no such additional effective districts under subparagraph
17 (A) ~~is~~ *are* possible, the court shall implement, as an appropriate
18 remedy under this subdivision, a single-member district-based
19 election system that ~~provide~~ *provides* the protected class the
20 opportunity to join in a coalition of ~~groups~~ *two or more protected*
21 *classes* to elect candidates of their choice.

22 (C) In addition to implementing district-based elections under
23 this paragraph, a court may implement additional remedies,
24 including the remedies provided in paragraph (3).

25 (3) If the remedies under paragraph (2) are not legally viable,
26 the court shall implement other appropriate remedies, including,
27 but not limited to, increasing the size of the governing body; issuing
28 an injunction to delay an election; or requiring an election to be
29 held on the same day as a statewide election, as provided in Section
30 1001.

31 (b) This section does not prohibit the parties from settling a
32 dispute arising under this article. If the parties agree to settle a
33 dispute, the parties shall consider the remedies provided for in this
34 section when negotiating a settlement agreement. However, this
35 section does not limit the remedies available in out-of-court
36 settlements.

37 14043. In any action to enforce Section 14040 and Section
38 14041, the court shall allow the prevailing plaintiff party, other
39 than the state or political subdivision thereof, a reasonable
40 attorney's fee consistent with the standards established in Serrano

1 v. Priest (1977) 20 Cal.3d 25, 48-49, and litigation expenses
2 including, but not limited to, expert witness fees and expenses as
3 part of the costs. Prevailing defendant parties shall not recover any
4 costs, unless the court finds the action to be frivolous,
5 unreasonable, or without foundation.

6 14044. Any voter who is a member of a protected class and
7 who resides in a political subdivision where a violation of Sections
8 14040 and 14041 is alleged may file an action pursuant to those
9 sections in the superior court of the county in which the political
10 subdivision is located.

11 14045. If any provision of this article or its application to any
12 person or circumstance is held invalid, the remainder of the article
13 or the application of the provision to other persons or circumstances
14 shall not be affected.

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